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CONFIDENTIAL PRIVILEGED WORK PRODUCT

Dear Councilmembers:

We have received a copy of an email to each of you attaching a letter to the Office of Inspector General (“OIG”) from the Alliance for Affordable Energy. The Alliance’s letter addresses the recent request for proposals (“RFP”) issued by the OIG concerning Council utility regulation. We agree with the serious issues raised by the Alliance and feel that further comment by your advisors is merited.

The RFP (i) improperly usurps the regulatory authority of the Council as vested in it by the citizens of New Orleans in the City Charter and (ii) utterly fails to meet the OIG’s duties of independence and impartiality, as is evidenced by (a) the funding of the project by a private interest foundation with a history of supporting specific perspectives and (b) the lack of objectivity in the text of the RFP itself.

The RFP reaches far beyond its stated purpose of hiring a consultant “to determine whether the City’s current regulatory model operates efficiently and effectively at the lowest possible cost to ratepayers.” Rather than simply endeavoring to suggest improvements to the City’s regulatory system, the RFP mischaracterizes facts and relies on incorrect or misleading information in an apparent attempt to preordain the outcome of the inquiry. Indeed, the RFP consistently makes incorrect or misleading factual assertions or selectively uses information to repeatedly portray the Council’s current regulatory system in a negative light without being constrained by actual facts.

Moreover, the RFP fails to comply with the duties of independence and impartiality found in the Principles and Standards of Inspectors General (Green Book) promulgated by the Association of Inspectors General, which is incorporated by reference in the City’s OIG Ordinance. The RFP describes a project that is being funded by a private foundation that has a history of involvement in energy policy matters. Because of the source of the funding and the factual inaccuracies in the RFP, the appearance of bias is inescapable.

I. THE SCOPE OF THE RFP IMPROPERLY ATTEMPTS TO USURP THE REGULATORY AUTHORITY OF THE COUNCIL

Under §3-130(1) of the Home Rule Charter of the City of New Orleans, all regulatory powers over utilities are vested in the City Council:

The Council of the City of New Orleans shall have ***all*** powers of supervision, regulation, and control consistent with the maximum permissible exercise of the City's home rule authority and the Constitution of the State of Louisiana and shall be subject to all constitutional restrictions over any street railroad, electric, gas, heat, power, waterworks, and other public utility providing service within the City of New Orleans including, but not limited to the New Orleans Public Service, Inc. and the Louisiana Power and Light Company, their successors or assigns. (emphasis added)

By way of contrast, §9-401(2) of the Home Rule Charter states that the purpose of the OIG is:

to provide increased accountability and oversight of entities of city government or entities receiving funds through the city, and to assist in improving agency operations and deterring and identifying, fraud, waste, abuse, and illegal acts.

The purpose of the OIG, therefore, is not to make policy decisions for the City or to regulate utilities, that function rests with the Council. The scope of services of the RFP, however, goes beyond that stated purpose of the OIG and includes the following described service, which is a clear attempt to usurp the regulatory function of the Council:

Determine the long-term impacts of the decision to join the Midwest Independent System Operator (MISO) and divest itself of its electricity transmission assets to ITC Holdings Corp. (ITC). Verify projected cost savings to ratepayers through independent analysis.

In addition to usurping the Council's regulatory authority, the RFP raises serious concerns that the OIG does not properly understand the scope of the tasks set forth in the RFP and the level of work that will be required in order to complete them in a competent manner. The MISO/ITC transactions represent two of the largest, most complex reconfigurations of a major electricity system ever. Every regulator in every jurisdiction affected by the proposed transactions, not just Entergy states, has been and continues to work diligently with their expert consultants to dissect and understand these transactions. The Federal Energy Regulatory Commission ("FERC") has several active dockets reviewing these proposals with the input of every stakeholder, including the City Council.

Scores of these stakeholders have and will file thousands of pages of testimony, objections, statements, documents, etc. to try to elucidate and protect each of their often competing interests. Subtle distinctions buried in opaque filings could determine vastly different outcomes for each stakeholder. The transaction is not a zero-sum game. Each regulator will have to use whatever leverage it can muster to try to maximize benefits and minimize negative impacts for its ratepayers, not to mention the expected struggle over which regulator will get to decide ultimately what will happen given that there are issues of jurisdiction between state/local regulators and FERC.

To suggest, as the OIG/RFP does, that this extraordinary complexity can be deciphered by a third-party within nine months and with a nominal budget, to the point of the certainty implied in the scope of services, is entirely misleading and lacks any appreciation of the utility regulatory function. Moreover, it is inappropriate to attempt to substitute the judgment of an unaccountable observer for the regulatory obligations of the elected City Council as prescribed by the New Orleans Home Rule Charter, that has been approved by New Orleans voters.

Indeed, the decision of the voters to rest the utility regulatory function with the Council is not just an unquestioned “tradition.” In 1982, a ballot proposition to transfer regulatory authority over ENO’s predecessor to the LPSC was approved. Almost immediately the negative impacts on New Orleans ratepayers became evident, to the extent that just three years later the New Orleans electorate voted 2-1 to return regulatory authority to the Council. The return of regulatory authority was supported by a diverse coalition that included the League of Women Voters, the Alliance for Good Government, the NAACP, the local Republican newsletter, the Uptown Democratic Association and numerous religious and community organizations.¹

The return of utility regulatory authority was also strongly endorsed by the Times-Picayune:

This newspaper recommends that New Orleans voters approve Proposition 1. . . to return regulatory authority over New Orleans Public Service, Inc. [ENO’s predecessor] . . . to the City Council.

Regulatory authority over NOPSI was moved from the council to the state Public Service Commission in a 1981 election. We endorsed the change at the time chiefly on the grounds that the local public and ratepayers would benefit from higher-quality, relatively politically insulated regulation by a state body, which does nothing but such regulation, than from a City Council that has many duties.

¹ *Proposition 1: A storm over power costs*, The Times-Picayune, Apr. 28, 1985.

It has not turned out that way, however.

....

All things considered, we think the public interest would be more effectively served by having [ENO] regulation in local hands.²

The City's ill-fated experiment with LPSC regulation was recalled by Clancy DuBos in a 2007 *Gambit* article:

Moreover, decades of cozy relationships between NOPSI's [predecessor to ENO] parent company, Middle South Utilities (predecessor to Entergy Corp.), and PSC members worked against New Orleanians getting a fair shake. Before long, local ratepayers were being stuck with the skyrocketing costs of the utility system's white elephant—an expensive nuclear power plant in Mississippi called Grand Gulf. Local electric rates soared, and there was nothing local ratepayers could do about it. . . .

Angered by rising monthly utility bills, citizens voted more than two-to-one to return regulatory authority to the City Council, and **ever since then New Orleanians have enjoyed substantially more aggressive utility regulation than most Louisiana ratepayers. The result: lower base rates in New Orleans than anywhere else in the Entergy system in Louisiana.**

Lower rates do not happen by luck or accident. Utility regulation is a painstaking, complex, often thankless task, and doing it effectively takes a team of top-drawer advisers, analysts and attorneys. . . . **Truth is, the New Orleans City Council and its utility consultants since 1985 have saved local ratepayers billions in excessive costs, including more than \$1 billion in Grand Gulf charges that the utility was forced to absorb.³**

² Editorial, *Return NOPSI to council*, The Times-Picayune, Apr. 28, 1985 (emphasis added).

³Clancy DuBos, *Power Play*, *Gambit*, Apr. 10, 2007, available at <http://www.bestofneworleans.com/gambit/power-play/Content?oid=1247504> (emphasis added).

The OIG/RFP also includes in the scope of services reference to concepts, promoted by energy efficiency organizations. The OIG/RFP purports to reference some new concepts that have not yet even come before the Council. This goes well beyond the OIG's purpose of increasing accountability and oversight of government and seeks to make a substantive determination regarding an electric regulatory issue before the Council has even completed its regulatory process. Specifically, the RFP refers to "decoupling" in connection with energy efficiency programs. That concept is under active consideration by the Council in Council Docket UD-08-02 in connection with the Entergy New Orleans, Inc.'s ("ENO") and Entergy Louisiana, LLC's ("ELL") Integrated Resource Plans ("IRP"), which were filed at the direction of the Council (Resolution R-11-30) as recently as October, 2012. The Council's advisors are actively integrating the Regulatory Assistance Project ("RAP"), which promotes decoupling, into the IRP process and Council Resolution R-13-17 specifically directs the company to file by April 1, 2013 its supplemental implementation and cost recovery plans where decoupling will be considered. The IRP process started its procedural schedule with a technical conference on February 20th. Accordingly, the concept of decoupling is on course for consideration by the Council Utility Committee and it is entirely inappropriate for the OIG to preordain this regulatory determination at the expense of the existing deliberative process and substitute its judgment completely divorced from the appropriate regulatory standard that the Council is mandated to consider in its evaluation of all aspects of what constitutes the "public interest" in its utility regulatory authority.

It is simply not the role of the OIG to use assessments and reports to substitute its own, or some unaccountable third-party's judgment for the judgment of a duly authorized legislative or executive entity as empowered by the City Charter. The OIG's role is to increase accountability and oversight of government to assist in improving agency operations and deterring and identifying, fraud, waste, abuse, and illegal acts. It is not the function of the OIG to set energy policy for the City or to override the will of New Orleans voters, as reflected in the Home Rule Charter. Could the OIG commission an "assessment" as to whether the City should seek to host another Super Bowl since some critics question the economic benefit of such events?⁴ Could the OIG "study" whether the city should replace the city council form of government with a police jury? How do these policy issues relate to the fraud and corruption issues that the voters had in mind when they approved an office of inspector general? Not at all!

⁴ Travis Wadron, *Sorry, New Orleans: The Super Bowl Won't Bring a Major Boost to Your Economy*, Think Progress Economy, Jan. 24, 2013, available at <http://thinkprogress.org/economy/2013/01/24/1490801/new-orleans-super-bowl-econom/>.

II. THE RFP RAISES SERIOUS ISSUES REGARDING THE OIG'S DUTIES OF INDEPENDENCE AND IMPARTIALITY

The OIG has a duty not only to be independent and impartial in actuality, but also to avoid any situation that might cause others to question the its independence and impartiality. The RFP, however, creates the impression that the project set forth by the OIG will be funded by a party with an interest in assuring a specific outcome, and that the OIG has already prejudged the issue in advance of its investigation.

The enabling legislation provides that the OIG “will conform to the Principles and Standards for Offices of Inspectors General (Green Book) promulgated by the Association of Inspectors General.”⁵

The Green Book sets forth the duty of independence to which the OIG must conform:

The inspector general is responsible for establishing and maintaining independence so that OIG opinions, conclusions, judgments, and recommendations will be impartial and viewed by others as impartial. The inspector general and OIG staff should consider not only whether they are independent and whether their own attitudes and beliefs permit them to be independent, but also whether there is anything about their situation which might lead others to question their independence. **All situations deserve consideration since it is important that the OIG be as independent as possible and impartial in fact and appearance.**⁶

The Green Book also addresses OIG independence as affected by funding:

The statute should contain provisions to help establish and maintain the independence of the inspector general and the OIG. The statute should address:

. . .

⁵ New Orleans, La. Code of Ordinances, Art. 13 §§ 2-1120(13) (Art. 13 §§ 2-1120, *et seq.* hereinafter referred to as “OIG Ordinance”).

⁶ Green Book, Quality Standards for Offices of Inspector General, *Independence, Section B. (Background)* (emphasis added).

Funding – The OIG should be funded through a mechanism that will provide adequate funding to perform its mission without subjecting it to internal or **external impairments on its independence.**⁷

Similarly, the Green Book addresses specific standards for inspections, evaluations, and reviews. The relevant standard for “independence” states:

The inspector general and OIG staff involved in performing or supervising any assignment should be **free from personal or external impairments to independence** and should constantly maintain an independent attitude and **appearance.**⁸

“External impairments,” are also discussed in the context of independence:

Factors external to the OIG can restrict the efforts or interfere with the OIG’s ability to form independent and objective opinions and conclusions. For example, under the following conditions work could be adversely affected and the OIG would not have complete freedom to make an independent and objective judgment:

...

Interference or undue influence in the OIG’s **selection of what is to be examined, determination of scope and timing of work or approach to be used, the appropriate content of any resulting report,** or resolution of audit findings.⁹

Therefore, under the enabling legislation, which incorporates the “Green Book,” the OIG must avoid situations in which external factors -- especially funding -- could influence the outcome of the OIG’s inquiry or inspection. Similarly, it must avoid situations that could cause others to question its independence and impartiality in considering an issue.

⁷ Green Book, Quality Standards for Offices of Inspector General, at 6 (emphasis added), *available at* <http://www.cabq.gov/audit/documents/OIGStandards-Greenbook.pdf> (“Green Book”).

⁸ *Id.* at 8 (emphasis added).

⁹ *Id.* at 9 (emphasis added).

It is clearly inappropriate, and a violation of the enabling legislation, to conduct an assessment using outside funding, especially from an interested source. The recently issued RFP, funded by an interested third-party, compromises this independence standard.

A. ACCEPTING FUNDING FROM A PRIVATE INTEREST FOUNDATION CALLS THE OIG'S INDEPENDENCE AND OBJECTIVITY INTO QUESTION

It is clearly inappropriate, and a violation of the enabling legislation, which incorporates the "Green Book," to conduct an assessment using outside funding, especially from an interested source. The recently issued RFP, funded by an interested third-party, compromises this independence standard. The Request for Proposals for Utilities Regulation Consulting Services seeks to hire a utility consultant "to provide a detailed assessment of the strengths and weaknesses of the City's current [utility] regulatory structure and to recommend a regulatory model that would best serve the interests of New Orleans and its ratepayers."

Any such assessment could easily be influenced by the perspective and predisposition of the investigator. The source of funding of such an investigation could have an actual influence on such perspective and predisposition, but certainly creates the appearance of influence. Presumably, that is why the OIG enabling legislation¹⁰ specifies that "the office of inspector general **shall** be funded by an annual appropriation by the city council as part of the city's operating budget."¹¹ The provision is mandatory and allows for no exceptions. In addition, the Code provides that the OIG "shall prepare and transmit an annual operating budget to the chief administrative officer, identifying in the budget all proposed **expenditures** for the following fiscal year."¹² There is no provision for identifying **other** or **outside** sources of funding, because no such funding is anticipated. Clearly, this is a considered judgment that outside funding imperils OIG independence.

Yet, the RFP utility project is being funded not only by an outside source, but one that has a history of supporting particular perspectives and predispositions as to matters related to utility regulation and utility policy. The RosaMary Foundation is well-known for its long-standing support of certain energy policy matters. The Foundation clearly has a specific perspective on energy matters, just as Entergy Corporation has its perspective. The RosaMary Foundation has provided \$250,000 to the OIG to conduct the utility project. Just as Entergy Corp. should not fund an OIG assessment of energy policy or regulatory matters nor should the RosaMary Foundation. Using third party funding for an inquiry into the Council's energy regulation -- at a minimum -- creates an appearance of external influence upon the OIG and likely also creates actual external influence upon the

¹⁰ New Orleans, La. Code of Ordinances, Art. 13 §§ 2-1120, *et seq.* ("OIG Ordinance").

¹¹ *Id.* § 2-1120 (5) (a) (emphasis added).

¹² *Id.* § 2-1120 (5) (b) (emphasis added).

OIG, in a manner directly contrary to the guidelines in the Green Book to which the OIG must adhere.

B. THE FORM OF THE RFP IS UNUSUALLY BIASED AND LACKS OBJECTIVITY

The RFP for the OIG utility regulatory assessment is unusual in that it goes well beyond stating the nature of the project, the scope of services and the qualifications sought. In fact, the RFP reads more like a brief for a particular view point -- specifically that the Council's regulatory system is ineffectual and flawed. Even a casual review of City RFPs on the City web-site shows that factual assertions about the subject of the scope of services, much less seemingly biased factual assertions, simply do not appear in standard RFPs.

Yet, the OIG/RFP makes several factual assertions that are either incorrect or incomplete, with the errors consistently favoring a negative view of the Council's current regulatory system. For example, the OIG/RFP makes the unqualified statement that the City Council's regulatory costs "are **significantly higher** than what the Louisiana Public Service Commission ("LPSC") spends for the state's remaining sixty-three parishes." (Emphasis added.) The RFP cites a study by the Bureau of Governmental Research ("BGR") in support of this bold factual assertion.

However, the BGR Report, which only touches on the City's utility regulatory system in two pages of a twenty page report, is far more equivocal. After noting the LPSC in 2009 had \$4.7 million in outside consultant costs, the BGR acknowledged "[a] key difference between the regulatory approaches of the City Council and the Public Service Commission is that the Commission maintains a significant in-house staff," while the Council has only two staff positions. By most reports the LPSC has an in-house staff of approximately seventy (70) full-time employees. The BGR, without citation, says the LPSC staff costs were \$7.5 million in 2009.¹³ Arguably, it could be certainly more costly. Most important, however, is the far more nuanced conclusion that even the BGR, no friend to the current Council's regulatory system, reaches in contrast the OIG/RFP's bold assertion. The BGR says simply that "[t]he cost of regulation in New Orleans **appears disproportionate** to the cost of regulation in the rest of the state."¹⁴ There is a huge difference between saying the cost "appears disproportionate" and saying the costs **are** unequivocally "significantly higher." The OIG/RFP reflects no such nuance, but does reflect the biased, predetermined conclusion that the costs "**are significantly higher.**"

¹³ Bureau of Governmental Research, Inside Outsourcing (Nov. 2010) at 5-6, *available at* http://www.bgr.org/files/reports/BGR_InsideOutsourcing.pdf ("BGR Report").

¹⁴ *Id.* at 6 (emphasis added).

Why would an RFP issued by an impartial OIG want to mislead a responder into believing that an independent research group had already reached a conclusion key to the scope of services, when they had not? This certainly raises the aura of bias.

Similarly, the OIG/RFP makes another unqualified, incorrect factual statement: “[t]he outside consultants come at a significant cost; the Council **spent** approximately \$43 million for these services between 2008 and 2011.” (Emphasis added.) The RFP cites these figures to a City Business article from January 11, 2012. However, that article actually says: “Over the past **decade**, contracts with the lawyers, engineers and accountants who help the council members control how much Entergy New Orleans customers pay for power **allowed for a maximum total payment** of more than \$43 million.”¹⁵ Even aside from the accuracy of the numbers, the OIG/RFP asserts the amount is for a **four-year** period while the article clearly says a **decade**. Also, the OIG/RFP asserts that the amount was “**spent**” while the article says it was the maximum “**allowed**” for the ten-year period, without any assertion as to what was actually paid. Moreover, in another City Business article the very next day by the same writer, the cost amount for the 2008-2011 timeframe was reported as \$24,105,021.00.¹⁶ Why would an objective OIG overlook such information in an article it cites as its source in the preparation of the RFP and misstate the amount by nearly 100%?

In addition, the OIG/RFP completely ignores the context of the City Business articles. In commenting on the consultant costs, the article cited in the RFP also says: “In return [for the consultant costs], Entergy New Orleans saw a \$72.1 million dollar decrease in electricity and gas rates over the past three years and won favorable settlements in a number of legal battles with the company.” These positive facts are not referenced in the OIG/RFP even though they appear in the same article misquoted in the RFP. The RFP seems consciously and consistently to cast everything negatively against Council regulation and the exercise of the Council’s Charter responsibilities. This compounds the appearance of bias and/or prejudgment.

Further, the costs of regulation are but one side of the equation. Costs are always measured against the benefits received for the expenditure. An objective measurement of the tremendous success the Council has had in saving ratepayers money by virtue of its regulatory approach since 2005 shows that, at a minimum,¹⁷ **the Council by virtue of its local regulation of utility companies has saved ratepayers over \$815,000,000¹⁸ over the past eight years.**

¹⁵ Jennifer Larino, *Lower Entergy bills come at a cost to customers*, New Orleans City Business, Jan. 11, 2012.

¹⁶ Jennifer Larino, *Examining the cost of utility regulation in New Orleans*, New Orleans City Business, Jan. 12, 2012.

¹⁷ A \$1.00 reduction in base rates in year one is, in actuality, a savings over multiple years until the rates are increased by virtue of actions of the utility.

¹⁸ See Attachment 1 hereto which only reflects first year monetized ratepayer savings and not Council actions that are qualitative over the same period.

Finally, the OIG/RFP mischaracterizes the relative position of Entergy New Orleans, Inc. (“ENO”) rates by focusing on a snapshot in time rather than acknowledging the fluid nature of rate comparisons. Specifically, the RFP says: “According to the United States Energy Information Administration, Entergy New Orleans’s [sic] retail electricity rates were the second highest among investor-owned utilities in the state of Louisiana in 2011.” Again, in the City Business article **ignored** by the RFP, this rate comparison is discussed:

Looking back on 2010, the most recent U.S. Energy Information Administration data available comparing rates from all utilities in Louisiana, Entergy New Orleans retail electricity rates, which averaged 10.56 cents per kilowatt hour that year, were the second highest among investor-owned utilities in the state.

...

The story changes when tracking data from Entergy from September last year to January, however. Entergy New Orleans rates averaged 8.85 cents per kilowatt hour, the lowest in the Entergy system and lower than average rates for Entergy Louisiana at 9.4 cents and Entergy Gulf States at 8.94 cents.¹⁹

The OIG also overlooks other reports that contradict the “theory” of the RFP. It has been reported more recently than the EAI report referenced by the OIG that New Orleans ratepayers pay among the lowest electricity and gas rates in the state, the region and the country. Richard Thompson, writing in the Times-Picayune, has reported that “[t]he numbers are in, and Entergy New Orleans had the **least expensive electricity in the region in March**, according to figures from the Louisiana Public Service Commission. . . .”²⁰ Once again, the OIG/RFP uses only a part of the facts; the part least favorable to Council regulatory control. The RFP also omits statements such as: “**Ratepayer advocates and council members say that the best way to keep energy prices in New Orleans affordable is to keep regulatory control with the city council.**”²¹

In addition to incorrectly characterizing the City’s regulatory costs, the RFP implies that ENO also has an unacceptably higher return on equity (“ROE”) leaving the overall

¹⁹ See *supra* n.16 (emphasis added).

²⁰ Richard Thompson, *Entergy New Orleans customers see bills fall in March*, The Times-Picayune, Mar. 12, 2012, available at http://www.nola.com/business/index.ssf/2012/03/entergy_new_orleans_customers_1.html (emphasis added).

²¹ See *supra* n.16 (emphasis added).

impression to any reader, including a national business audience, that New Orleans is an unfavorable place to live or invest because of high energy bills resulting from lax utility regulation.

In fact, New Orleans has a very favorable energy cost environment. The OIG/RFP overlooks that rates and bills are affected by factors that vary frequently, sometimes monthly. It has been reported recently that New Orleans ratepayers pay among the lowest electricity and gas rates in the state, the region and the country. Richard Thompson has reported that “[t]he numbers are in, and Entergy New Orleans had the least expensive electricity in the region in March, according to figures from the Louisiana Public Service Commission.”²² Similarly, *City Business* reported in January, 2012 in an article on outside consultants that due to the work of the consultants and actions by the Council “Entergy New Orleans customers saw a \$72.1 million decrease in electricity and gas rates over the past three years and won favorable settlements in a number of legal battles with the company.”²³ In addition the Edison Electric Institute (“EEI”) national report of average residential electricity rates through May, 2012 showed that ENO rates were lower than 133 other ranked utilities and slightly higher than only 38 utilities.²⁴ These facts speak for themselves.

The favorable utility rate environment that the Council has been able to create in New Orleans is the result of diligent Council oversight and complex regulatory negotiations. Despite the impression given in the OIG/RFP about higher returns on equity, the ROEs of each Entergy company for 2011 are within a fraction of a point of each other.²⁵ It is worthy to note that these ROE's were approved by ALL of the other Entergy utility regulators -- thus the OIG's RFP is not only disparaging the City Council -- but, implicitly, all of the other Entergy regulatory regulators as well. Even so, ROE is only one component of energy cost, which cannot be viewed in isolation. A singular focus on ROEs cannot begin to tell the story of how the Council has been successful in keeping customer bills among the lowest in the nation.

For example, in 2009 the Council advisors negotiated, and the Council approved, an agreement that gave ENO a slightly higher ROE in exchange for numerous additional considerations beneficial to New Orleans ratepayers. The agreement resulted in the Council's development and implementation of a seminal energy efficiency program that

²² See *supra* n.20.

²³ See *supra* n.15.

²⁴ See *supra* nn.20 & 15. See also Edison Electric Institute, Utility-Scale Smart Meter Deployments, Plans & Proposals, EEI Report, May 30, 2012, *available at* http://www.edisonfoundation.net/iee/Documents/IEE_SmartMeterRollouts_0512.pdf.

²⁵ It is also important to note that ROEs are based upon isolated points in time. They reflect the last base rate case or formula rate plan (“FRP”) for a particular utility. New base rate cases and/or FRPs happen periodically. Variances among ROEs often reflect not only that one company has been through a base rate case or FRP more recently than another, but the individual credit matrix of that specific utility when measured against comparable utilities. Comparing ROEs without considering this information is comparing apples to oranges.

has been praised as the “lone bright star” of such programs in Louisiana.²⁶ In fact, this accolade has recently become even more dramatic considering that at their meeting on February 27, 2013, the LPSC voted to suspend even the modest energy efficiency program it had recently approved:

Energy efficiency program abruptly halted – The meeting ended with a **dramatic demonstration of raw political force** when newly elected Chairman Eric Skrmetta and his Republican colleagues on the commission – Clyde Holloway and Scott Angelle – formed the necessary three-vote majority to overturn the recently adopted energy efficiency program. (Docket R-31106) Commissioners Campbell and Lambert Boissiere tried to slow the train, but it was clear the Republicans had the votes and would not be deterred. **Chairman Skrmetta refused to allow energy efficiency supporters to address the commission, although it was clear it wouldn’t have made a difference because the majority apparently had their minds made up.**²⁷

Also with regard to the 2009 settlement, the Council approved an agreement ensuring the right of first refusal for ENO to purchase power from a new electric generation facility (Ninemile 6) to be built by ELL that will have much lower operating costs. This will reduce the City’s reliance on the older, less reliable, less efficient Michoud generation facility, which has comparatively higher operating costs that have created spikes in some billing cycles. Not only did this result in approximately \$16,000,000 in production cost savings to New Orleans ratepayers, it also improves the reliability of service to New Orleans in the event of a storm event in Entergy’s heavily constrained transmission area that serves the City. Neither ENO nor ELL had any obligation to provide this benefit to New Orleans from a non-ENO facility. It was only through the leadership of the Council and its aggressive regulatory posture of the Council that this very favorable opportunity came to the City.

None of this even begins to address the unprecedented and overwhelming challenge that the City faced as a result of the near total destruction of the ENO system in Katrina. Katrina pushed ENO into bankruptcy and there were dire predictions that even if the company survived, ratepayers would be facing crippling rate increases—some estimating as high as 140%. Again, through the combined efforts of the Utility Committee and its

²⁶ The American Council for an Energy-Efficient Economy (“ACEEE”) said in its 2012 report: “Louisiana, on the other hand, ranks near the back of the pack in pushing the state toward energy efficiency initiatives. New Orleans, which has offered residents the chance to participate in an \$11 million energy saving program developed by the City Council and Entergy New Orleans, was lauded as the state’s lone bright spot.”

²⁷ www.thecruthirdsreport.com, March 1, 2013, 1:34:23 p.m. EST (emphasis added).

consultants, the Council and the company not only did ENO survive, but the frightening predictions of triple digit rate increases were turned into a rate freeze as ENO emerged from bankruptcy, with modest agreed increases in the years immediately thereafter **resulting in over \$270,000,000 in savings to ratepayers** despite dire predictions to the contrary.²⁸ This coordinated effort was so successful that *Gambit* columnist Clancy DuBos concluded:

And while cushioning customers from the immediate, dramatic rate hikes is vitally important to residents' mindset, the long-term impact of the deal is even more striking. Allowing ENO to emerge from bankruptcy is a crucial milestone in the city's ongoing recovery efforts. It sends a message to the world—particularly outside, private investors—that New Orleans is regaining its infrastructure. That, along with a predictable, reliable source of relatively cheap energy, will help calm the nerves of investors as well as displaced residents who are trying to decide whether to return. This agreement removes one more “wild card” from the deck.²⁹

None of this positive information, and much more that could be presented from a historical perspective to give context in the OIG/RFP, is even hinted at in the OIG/RFP, which gives a uniformly negative and inaccurate portrayal of the facts and the Council's exercise of its regulatory authority. It is difficult to imagine that much credence can be given to any assessment that results from such a biased beginning.

It is inescapable that the OIG/RFP in form and content paints a distorted picture that pre-judges the assessment in the most negative light, suggesting a lack of independence. Moreover, the form and content of the OIG/RFP also suggests a violation of the Green Book standard and guidelines on “due professional care” which requires:

Objectivity – Evidence should be gathered and reported in a **fair, unbiased, and independent manner** to convince the report user of the validity of the conclusions and recommendations made during the inspection, evaluation or review.³⁰

The outside funding, coupled with the biased and unorthodox form and substance of the RFP, seriously breaches these standards and guidelines.

²⁸ “Under the agreements hammered, out the ENO electric rates will remain frozen at current levels until January 2008.” Clancy DuBos, *Power to the People*, *Gambit*, Oct. 31, 2006, available at <http://www.bestofneworleans.com/gambit/power-to-the-people/Content?oid=1246633>.

²⁹ *Id.*

³⁰ Green Book at 35 (emphasis added).

We trust we have provided collective insight to some of the matters raised by the Alliance in its recent correspondence to you. Of course, if you have any questions please do not hesitate to contact any of us.

Sincerely,

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